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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/751,468 | 01/06/2004 | Stephan Poulin | 87367.1900 | 2347 |
| 7590 | 06/03/2005 | | EXAMINER | |
| BAKER & HOSTETLER LLP Suite 1100 Washington Square 1050 Connecticut Avenue, N.W. Washington, DC 20036 | | | CONLEY, FREDRICK C | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3673 | |
| | | | | DATE MAILED: 06/03/2005 |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-------------------|---------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/751,468 | POULIN ET AL. |
| | Examiner | Art Unit |
| | FREDRICK C CONLEY | 3673 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 March 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-8 and 10-19 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3,8,10,15,16,18 and 19 is/are rejected.
- 7) Claim(s) 4-7,11-14 and 17 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

The indicated allowability of claims 2-3, 9-10, and 18 is withdrawn in view of the newly discovered reference(s) to Brooke. Rejections based on the newly cited reference(s) follow. The Examiner regrets any inconvenience.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 8, 10, 15, and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Canadian Pat. No. 2,331,806 to Brooke et al.

Claim 1, Brooke discloses a side rail 100 for mounting onto a patient support assembly 40, the patient support assembly having a longitudinal x-axis, a transversal y-axis and a vertical z-axis, said axes being mutually orthogonal to each other, the x-axis extending

longitudinally along the patient support assembly, from a front portion of the assembly to an opposite rear portion thereof, the y-axis extending transversally across the patient support assembly, from a left side portion of the assembly to an opposite right side portion thereof, and the z-axis extending vertically along the patient support assembly, from a bottom portion of the assembly to an opposite top portion thereof, the side rail extending substantially along the x-axis of the patient support assembly, the side rail being operatively mountable onto a corresponding side portion of the patient support assembly, the side rail comprising:

a first support bar 104 having upper and lower ends, the lower end of the first support bar being pivotally mountable to said corresponding side portion of the patient support assembly (fig. 8);

a second support bar 104 having upper and lower ends, the lower end of the second support bar being pivotally mountable to said corresponding side portion of the patient support assembly (fig. 8), and

at least one cross bar 102 having first and second ends pivotally connected 113 to the first and second support bars respectively, the side rail being operable between a raised configuration where the at least one cross bar is above a segment of the patient support assembly for preventing egress of a patient from said assembly (fig. 8), and a lowered configuration where said at

least one cross bar is below said segment of the patient support assembly for allowing egress of the patient from the assembly (fig. 9), wherein the support bars and the at least one cross bar of the side rail are substantially positioned within a same vertical plane, being substantially parallel to the corresponding side portion of the patient support assembly, and wherein the first and second support bars are rotatable with respect to said corresponding side portion about respective axes being parallel to the y-axis, and the first and second ends of the at least one cross bar are rotatable with respect to the support bars about respective axes being parallel to the y-axis, so that the side rail be operated between the raised and lowered configurations along said same vertical plane and so that the side rail be collapsible in the lowered configuration,

within said same vertical plane, and wherein the side rail comprises a pivot bar 106 having first and second ends, the first end of the pivot bar being pivotally mountable about said corresponding side portion of the patient support assembly and being rotatable thereabout about an axis parallel to the y-axis, and the second end of the pivot bar being pivotally connected to the lower end of the second support bar and being rotatable thereabout about an axis parallel to the v-axis. the pivot bar being shaped, positioned and dimensioned so as to prevent the side rail from exceeding a predetermined distance longitudinally along the patient support assembly when operated and collapsed into the lowered configuration.

Claims 3 and 10, wherein the lower end of the first support bar is provided with blocking means 110 cooperating with the patient support assembly, and operable between a blocking configuration where the blocking means are engaged with the assembly and maintain the side rail in a raised configuration, and a release configuration where the blocking means are disengaged from the assembly for allowing the side rail to be operated into a lowered configuration.

Claim 8, Brooke discloses a hospital bed having a longitudinal x-axis, a transversal y-axis and a vertical z-axis, said axes being mutually orthogonal to each other, the x-axis extending longitudinally along the hospital bed, from a front portion of the bed to an opposite rear portion thereof, the y-axis extending transversally across the hospital bed, from a left side portion of the bed to an opposite right side portion thereof, and the z-axis extending vertically along the hospital bed, from a bottom portion of the

bed to an opposite top portion thereof, the hospital bed comprising:

a base structure 18 extending substantially along the x-axis of the hospital bed,

the base structure being movable along at least one of said axes;

a patient support platform also extending substantially along the x-axis of

the hospital bed, the patient support platform 40 being operatively connected onto the

base structure for receiving a patient thereon and having sections movable about

at least one of said axes for assuming different configurations, and

at least one side rail also extending substantially along the x-axis of the

hospital bed, each side rail being operatively mounted onto a corresponding side

portion of the hospital bed, each side rail comprising:

a first support bar 104 having upper and lower ends, the lower end of the

first support bar being pivotally mounted to said corresponding side portion

of the hospital bed (fig. 8);

a second support bar 104 having upper and lower ends, the lower end of the second support bar being pivotally mounted to said corresponding side portion of the hospital bed; and

at least one cross bar 102 having first and second ends pivotally connected 113 to the first and second support bars respectively,

each side rail being operable between a raised configuration where the at least one cross bar is above a segment of the patient support platform for preventing egress of the patient from said platform (fig. 8), and a lowered configuration where said at least one cross bar is below said segment of the patient support platform for allowing egress

of the patient from the platform (fig. 9); wherein the support bars and the at least one cross bar of each side rail are substantially positioned within a same vertical plane, being substantially parallel to the corresponding side portion of the hospital bed, and wherein the first and second support bars are rotatable with respect to said corresponding side portion about respective axes being parallel to the y-axis, and the first and second ends of the at least one cross bar are rotatable with respect to the support bars about respective axes being parallel to the y-axis, so that each side rail be operated

between the raised and lowered configurations along said same vertical plane and so that said each side rail be collapsible in the lowered configuration, within said same vertical plane, and wherein the side rail comprises a pivot bar 106 having first and second ends, the first end of the pivot bar being pivotally mountable about said corresponding side portion of the patient support assembly and being rotatable thereabout about an axis parallel to the y-axis, and the second end of the pivot bar being pivotally connected to the lower end of the second support bar and being rotatable thereabout about an axis parallel to the v-axis. the pivot bar being shaped, positioned and dimensioned so as to prevent the side rail from exceeding a predetermined distance longitudinally along the patient support assembly when operated and collapsed into the lowered configuration.

Claim 15, wherein said at least one side rail comprises first and second side rails, the first side rail being operatively connected onto the left side portion of the hospital

bed, and the second side rail being operatively connected onto the right side portion of the hospital bed (fig. 6).

Claim 18, Brooke discloses a method of operating a side rail of a hospital bed, the method comprising the steps of:

- a) providing the hospital bed of claim 10, with the at least one side rail being in the lowered configuration; and
- b) rotating the support bars of the at least one side rail within said same vertical plane until triggering the blocking means 110 into a blocking configuration so as to operate said at least one side rail into the raised configuration.

Claim 19, Her discloses a kit for assembling a side rail for mounting onto a patient support assembly having a longitudinal x-axis, a transversal y-axis and a vertical z-axis, said axes being mutually orthogonal to each other, the x-axis extending longitudinally along the patient support assembly, from a front portion of the assembly to an opposite rear portion thereof, the y-axis extending transversally across the patient support assembly, from a left side portion of the assembly to an opposite right side portion thereof, and the z-axis extending vertically along the patient support assembly, from a bottom portion of the assembly to an opposite top portion thereof, the kit comprising:

a first support bar 104 having upper and lower ends, the lower end of the first support bar being pivotally mountable to said corresponding side portion of the patient support assembly (fig. 8),

a second support bar 104 having upper and lower ends, the lower end of

the second support bar being pivotally mountable to said corresponding side portion of the patient support assembly (fig. 8); and

at least one cross bar 102 having first and second ends pivotally connectable 113 to the first and second support bars respectively, once assembled, the side rail extending substantially along the x-axis of the patient support assembly, the side rail being operatively mounted onto a corresponding side portion of the patient support assembly and being operable between a raised configuration where the at least one cross bar is above a segment of the patient support assembly for preventing egress of a patient from said assembly (fig. 8), and a lowered configuration where said at least one cross bar is below said segment of the patient support assembly for allowing egress of the patient from the assembly (fig. 9), wherein the support bars and the at least one cross bar of each side rail are substantially positioned within a same vertical plane, being substantially parallel to the corresponding side portion of the patient support assembly, and wherein the first and second support bars are rotatable with respect to said corresponding side portion about respective axes being parallel to the y-axis, and the first and second ends of the at least one cross bar are rotatable with respect to the support bars about respective axes being parallel to the y-axis, so that the side rail be operated between the raised and lowered configurations along said same vertical plane and so that the side rail be collapsible in the lowered configuration, within said same vertical plane, and wherein the side rail comprises a pivot bar 106 having first and second ends, the first end of the pivot bar being pivotally mountable about said corresponding side

portion of the patient support assembly and being rotatable thereabout about an axis parallel to the y-axis, and the second end of the pivot bar being pivotally connected to the lower end of the second support bar and being rotatable thereabout about an axis parallel to the v-axis. the pivot bar being shaped, positioned and dimensioned so as to prevent the side rail from exceeding a predetermined distance longitudinally along the patient support assembly when operated and collapsed into the lowered configuration.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Canadian Pat. No. 2,331,806 to Brooke et al. in view of U.S. Pat. No. 6,389,622 to Her.

Claim 16, Brooke discloses all of the Applicant's claimed limitations except for the side rail comprising first and second pairs of side rails. Her discloses a patient support wherein said at least one side rail comprises first and second pairs of side rails, the first pair of side rails being operatively connected onto the left side portion of the hospital bed, and the second pair of side rails being operatively connected onto the right side portion of the hospital bed, each pair of side rails comprising first and second side rails, the first support bar of each of the first and second side rails being positioned substantially at a midpoint area along the bed and a constant distance being maintained between the first support bars of said first and second side rails when in the raised

configuration, irrespectively of configuration assumed by the patient support platform (fig. 6). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ first and second pairs of side rails as taught by Her in order to provide a safety rail for the upper and lower portions of a patients body while on the patient support.

Allowable Subject Matter

Claims 4-7, 11-14, and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1, 3, 8, 10, 15-16, and 18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 571-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC



ALISON PICKARD
PRIMARY EXAMINER